making of false statements by solicitors fall within the same category of offence."

Finally, there remains the question of the appropriate penalty to be imposed on the respondent in the circumstances of this case. In determining the penalty, we ought to have regard to the "moral obliquity" actually involved – see the Privy Council's dictum at the foot of the passage cited above. We have already stated that the offences for which the respondent was convicted are offences involving fraud and falsehood. The respondent argued that the facts and circumstances of his convictions showed that he was not guilty of "moral turpitude" and that it was an "error of judgment" on his part.

In his judgment dated April 18, 1985, the Chief Justice, who dealt with the fraudulent transfer charges under section 421, stated in relation to the $2,000 cheque that "in all the circumstances, the inference clearly arises that by (his) acts (the respondent) intended to place the proceeds of the cheque, when cashed, out of the reach of the creditors of the Worker's Party ... in circumstances which constitute an intent to defraud." Lai Kew Chai J., when passing sentence on the false declaration charge under section 199, said in his judgment dated November 10, 1986 that "(his) mental malignity was further evidenced by the fact that (he was) deliberately and wilfully thwarting a judgment creditor of (his) party". Accordingly, we were of the opinion that this submission was wholly devoid of merit.

For all these reasons, we were of the view that any one of the four criminal convictions, standing by itself, is sufficient to make the respondent unfit to remain as a member of this honourable profession and we ordered that he be struck off the roll of advocates and solicitors. We also ordered that the respondent bear the costs of these proceedings, such costs, at the suggestion of counsel for the Law Society, to be for disbursements only.

We further ordered, on the application of the respondent for a stay pending appeal, that there be no stay of our order pending appeal, since, in our view, it would be a contradiction in terms to allow the respondent to remain on the roll having regard to our view that his convictions made him unfit for his profession.

Order accordingly.

Solicitors: *J.B. Jeyaratnam & Co.*

VERNES ASIA LTD. v. TRENDALE INVESTMENT PTE. LTD. & ANOR.

[O.C.J. (Grimberg J.C.) January 12, 1988]

[Singapore – Originating Summons No. 1274 of 1986]

Contract – Loan and mortgage – Whether plaintiff illegal moneylender – Whether unlawfully conducting banking business – Whether conducting business in Singapore – Meaning of "banking business" – Nature of plaintiff's business – Banking Act, ss. 2 & 4 – Moneylenders Act, s. 5(1) & (2).

Banking – "Banking business" – Meaning of – Whether plaintiff doing banking business illegally – Banking Act, ss. 2 & 4.

Moneylenders – Whether plaintiff an illegal moneylender – Moneylenders Act, s. 5(1) & (2).

The plaintiff was a deposit-taking company incorporated in Hong Kong. It has no office or place of business in Singapore. The first defendant was a property developer.

The plaintiff made a loan to the first defendant for the first defendant to purchase certain property. The loan was also secured by a mortgage over the property. The first defendant defaulted in the payment of the loan. Meanwhile, the first defendant had let the property to the second defendant without the plaintiff's knowledge.

The plaintiff brought the present action to claim the sum owed with interest and also claimed vacant possession of the premises from the second defendant. The defendants contended firstly that the plaintiff was an illegal moneylender and secondly that it was unlawfully carrying on the business of banking in Singapore.

Held: (1) although the agreement was negotiated in Singapore, the first defendant's account was opened, and maintained, in Hong Kong and in the absence of evidence to the contrary, it must be inferred that the loan was funded from Hong Kong. The mere fact that the loan was secured by a Singapore registered mortgage cannot result in the plaintiff being said to have carried on business in Singapore;

(2) "banking business" in section 2 of the Banking Act means that a company can only be said to be conducting banking business if it performs all of the functions of receiving money on current or deposit account; paying and collecting cheques; making advances; and such other business as may be prescribed by the Monetary Authority of Singapore for the purposes of the Act. The legislature did not intend the definition of "banking business" in the Banking Act to be construed disjunctively so that the making of advances to customers alone amounts to the conduct of banking business. Therefore, the plaintiff was not conducting banking business in Singapore;

(3) the sum owed by the first defendant should be paid to the plaintiff. In the event of default, the mortgage over the property should be enforced by foreclosure or sale and the first and second defendants should deliver up the possession of the property.

Cases referred to:

(1) *The London Finance and Discount Company Limited* v. *Robert J. Butler and Mary Butler* [1929] Ir. R. 90.

(2) *John B. Skilling & Ors.* v. *Consolidated Hotels Ltd.* [1979] 2 M.L.J. 2.
(3) *Koh Kim Chai* v. *Asia Commercial Banking Corporation Limited* [1984] 1 M.L.J. 322.
(4) *United Dominions Trust* v. *Kirkwood* [1966] 1 All E.R. 968.
(5) *Re Roe's Legal Charge* [1982] 2 Lloyd's L.R. 370.
(6) *Bank of England* v. *Vagliano Brothers* [1891] A.C. 107.
(7) *Williamson And Others* v. *Rider* [1963] 1 Q.B. 89.
(8) *Yorkshire Insurance Co. Ltd.* v. *Nisbet Shipping Co. Ltd.* [1962] 2 Q.B. 330.

ORIGINATING SUMMONS.

Lawrence Boo for the plaintiff.

Bennett Lam for the first defendant.

Harbajan Singh for the second defendant.

Cur. Adv. Vult.

Grimberg J.C.: The plaintiff is a deposit-taking company incorporated in Hong Kong. It has no office or place of business in Singapore. The first defendant is a property developer incorporated, and carrying on business, in Singapore.

On September 14, 1984, Hu Joon Eng ("Hu") and Low Eng Geok ("Low"), directors of the first defendant, resolved that an account be opened by the first defendant with the plaintiff. The resolution authorized Hu and Low to (*inter alia*) secure advances to the first defendant from the plaintiff by way of loan.

By an agreement dated September 27, 1984 ("the agreement"), the plaintiff agreed to lend the first defendant a sum of US$695,387.10, to assist the first defendant in the purchase of a property in Singapore known as No. 6 Jalan Asuhan ("the property"). By the terms of the agreement, interest was payable by the first defendant at the rate of SIBOR plus 2% per annum, and the loan was repayable in full one year from the date of drawdown. The agreement also provided for the execution by the first defendant of a mortgage over the property in favour of the plaintiff. The performance of the agreement by the first defendant was guaranteed by a certain Suen Ya Yong, and by Hu, both residents of Singapore, who were parties to the agreement. It was not seriously disputed on behalf of the plaintiff that the agreement was executed by or on behalf of all parties in Singapore, and I so find.

The agreement expressly provided that it be governed and construed in accordance with the laws of Hong Kong.

In accordance with the terms of the agreement, the first defendant executed a mortgage over the property in favour of the plaintiff by way of an instrument of mortgage dated October 5, 1984, following which the loan was drawn down.

In the event, the first defendant failed to repay the loan to the plaintiff on due date or at all. It is not disputed that the amount *prima facie* due from the first defendant to the plaintiff as at September 8, 1986 was US$869,261.97, plus a further sum of US$152.21 by way of interest not rolled over. By a telex dated September 11, 1986, the first defendant, who did not then dispute liability, requested the plaintiff (whose solicitors had previously given notice of the plaintiff's intention to exercise its power of sale over the property) for an extension of time of three months from the date of the telex within which to settle the debt. This request was refused.

Meanwhile, by a tenancy agreement dated June 1, 1986, the first defendant had let the property to the second defendant for a period of three years from that date, at a rental of $3,500 per month. It is common ground that the first defendant had neither sought nor obtained the consent of the plaintiff to the letting. The second defendant, by its solicitors' letter dated October 14, 1986 to the plaintiff's agents in Singapore, declined to vacate the property in accordance with the plaintiffs' demand.

By these proceedings, the plaintiff claims, as against the first defendant, the sums due to it, delivery up of the property and an order that the mortgage over the property be enforced by foreclosure or sale; and as against the second defendant, delivery up of vacant possession of the property to the plaintiff.

In answer to the claims against it, the first defendant, having originally sought an extension of time to pay, now says that the plaintiff is precluded from recovering the sum advanced and accrued interest, and from enforcing the mortgage, on two grounds. Firstly, it is said that the plaintiff's claim must fail because the plaintiff was an unlicensed moneylender carrying on business in Singapore, and the obligation to repay was accordingly unenforceable by reason of section 15 of the Moneylenders Act; alternatively, it is argued

that the plaintiff, not being licensed under the Banking Act, was unlawfully carrying on the business of banking in Singapore, and is accordingly not entitled to recover, by reason of illegality.

Counsel for the second defendant associated his client with the arguments advanced on behalf of the first defendant. However, he conceded that if those arguments failed, the plaintiff was entitled to possession as against the second defendant.

The plaintiff is registered under the Deposit-taking Companies Ordinance of Hong Kong. That Ordinance, as its long title states, regulates the taking of money on deposit, makes provision for the protection of persons who deposit money, and provides for the regulation of the deposit-taking business for monetary policy purposes. It is an obvious corollary of the business of taking deposits, for the deposit-taker to make loans and advances, and the Act recognizes that fact by imposing restrictions (section 21C) and limitations (section 22) on the right of a deposit-taking company to enter into loan transactions. It was not suggested, on behalf of the defendants, that the loan by the plaintiff to the first defendant in any way offended the provisions of the Deposit-taking Companies Ordinance; and it was conceded on behalf of the plaintiff that it had advanced loans to borrowers in Singapore other than the first defendant.

1. *The Moneylenders Act defence*

Section 5(1) and (2) of the Moneylenders Act are in the following terms:

"5(1) Every moneylender residing and carrying on the business of moneylending in Singapore whether as principal or as agent shall take out a licence annually;

(2) A licence shall be taken out in respect of each name under which moneylending business is conducted. No licence shall be granted to a person not ordinarily resident in Singapore or to a firm where the person proposed to be responsible for the management of the firm is not ordinarily resident in Singapore."

The defendants contend that the object of the Moneylenders Act is to provide a means of control over moneylenders in order to prevent the conclusion, with borrowers in Singapore, of transactions which are harsh and unconscionable. The Act, it was argued, must therefore apply to all moneylenders, whether foreign or domestic, who carry on business in Singapore. The legislature cannot have intended the Act to permit foreign companies, not resident here, from lawfully conducting moneylending business in this country. That proposition, it was contended, is capable of being derived from section 5(1) and (2), which make it clear that a person who is not resident in Singapore is not entitled to a moneylender's licence.

The defendants relied on *The London Finance and Discount Company Limited* v. *Robert J. Butler and Mary Butler*[1] for the purposes of establishing that the plaintiff, although resident in Hong Kong, carried on the business of moneylending in Singapore. The plaintiff ("LFDC") in that case was a moneylender, incorporated and registered in Northern Ireland. It brought proceedings in the Irish Free State, in which it was not registered and had no place of business, in order to recover the balance of a loan made to the defendants, who resided in the latter state. The court held that the money was irrecoverable, and set aside a judgment which the plaintiff had obtained in an inferior court.

The facts were that although the plaintiff was not registered, and did not have a place of business, in the Irish Free State it solicited customers there by advertising in a Free State newspaper, by negotiating and substantially completing the transaction in question in the Free State, and by having its security perfected there. The court found that the plaintiff, whose business was that of moneylending, had advertised or announced itself or had held itself out as carrying on that business within the meaning of section 6 of the Moneylenders Act 1900 of the Irish Free State. Thus, in order to make its contract legal and enforceable in that state, it was obliged to comply with the registration requirements of that Act, which it had failed to do.

The defendants also relied on *John B. Skilling & Ors.* v. *Consolidated Hotels Ltd.*[2] for the proposition that, the plaintiff not being registered in Singapore, the agreement is unenforceable for illegality, notwithstanding that it may be expressed to be governed by the laws of Hong Kong, and may be enforceable in that colony. In the *Skilling* case, the plaintiffs were engineers. They rendered services to the defendants in Singapore, but were not registered here in accordance with the requirements of sections 18 and 19 of the Professional Engineers Act. The plaintiffs' claim was dismissed by the judge and his decision was affirmed by the Court of Appeal, which held that the agreement between the plaintiffs and their Singapore clients was illegal and unenforceable.

It was contended further, on behalf of the present defendants, that the fact that clause 19 of the agreement provided that it be governed by the laws of Hong Kong did not avail the plaintiff since a "contract (whether lawful by its proper law or not) is, in general, invalid insofar as the performance of it is unlawful by the law of the country where the contract is to be performed (*lex loci solutionis*)" – see Dicey & Morris, *The Conflict of Laws*, 10th Ed. Vol. II, Rule 149, Exception 1.

A plain reading of section 5(1) of the Moneylenders Act indicates that for the agreement to be caught by section 15 of the Act the plaintiff must not only have been carrying on the business of moneylending in Singapore, but it must also have been resident here. In my view, the *LFDC* case is of no assistance to the defendants with regard to the first requirement. That case was decided on its special facts, as applied to section 6 of the Act of the Irish Free State, which finds no equivalent in the Singapore statute.

I have already referred to the fact that the plaintiff is a company incorporated in Hong Kong, and that it has no office or place of business in Singapore. Although the agreement was negotiated in Singapore, the first defendant's account was opened, and maintained, in Hong Kong and, in the absence of evidence to the contrary, it must be inferred that the loan was funded from Hong Kong.

The mere fact that the loan was secured by a Singapore registered mortgage over a Singapore property cannot, in my view, result in the plaintiff being said to have carried on business in Singapore. In *Koh Kim Chai* v. *Asia Commercial Banking Corporation Limited*[3] the appellant charged land in Malaysia as security for advances made by the respondent, a Singapore bank, to a company in Singapore.

One of the issues which arose was as to whether the respondent, in obtaining a charge on land situated in Malaysia as security, and in attempting to enforce the charge, was transacting banking business in Malaysia. Both the High Court and the Federal Court held that the respondent was not conducting banking business in Malaysia, and the decisions were affirmed by the Privy Council. Although the facts in the *Koh Kim Chai* case were by no means on all fours with those before me, I derive comfort from it.

I find that the plaintiff was not carrying on the business of moneylending in Singapore.

Section 5(2) of the Act applies to moneylenders who both reside and carry on business in Singapore. It does not mean, when read with subsection (1), that a moneylender who neither resides nor carries on business in Singapore is unable to enter into a lawful and enforceable loan agreement with a borrower in Singapore. Section 5 of the Act defines the scope of the Act. It limits its operation, and the protection it offers to borrowers, to loan transactions concluded by them with moneylenders residing and carrying on business in Singapore. If borrowers choose to do business with moneylenders who reside and carry on business elsewhere, they do so without the protection that the Act affords, subject of course to such other remedies or defences with which the law may provide them.

Since it is plain that the plaintiff does not reside in Singapore, it follows that the plaintiff neither resides, nor carries on business, here for the purposes of section 5(1) of the Moneylenders Act.

The defence under the Moneylenders Act therefore fails.

2. *The Banking Act defence*

I turn to the second of the two defences set up by the defendants, namely, that the plaintiff was conducting unlicensed banking business in Singapore, and accordingly that the loan agreement concluded by it with the first defendant was illegal and unenforceable.

Section 4(1) of the Banking Act states:

> "No banking business shall be transacted in Singapore except by a company which is in possession of a valid licence granted under this Act by the Authority authorizing it to conduct banking business in Singapore."

Section 2(1) of the Act defines "banking business" and "company", respectively, as follows:

> " 'banking business' means the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, the making of advances to customers, and includes such other business as the Authority may prescribe for the purposes of this Act;
>
> 'company' means any company defined in any written law for the time being in force relating to companies, any company formed in pursuance of any Royal Charter or Letters Patent, and any company incorporated or registered under any written law in force in Singapore and includes any company incorporated outside Singapore which has complied with the provisions of any written law for the time being in force relating to companies."

In the course of his argument in relation to the Moneylenders Act defence, counsel for the plaintiff contended that his client was not a moneylender, since it carried on the business of banking in Hong Kong, and therefore did not fall within the definition of a "moneylender", section 2 of the Moneylenders Act expressly excluding from the definition of moneylender "any person *bona fide* carrying on the business of banking ...". Counsel for the first defendant was quick to seize on this contention in aid of the Banking Act defence, and argued that the loan agreement between the plaintiff and the first defendant constituted "banking business", particularly when viewed in the context of the other admitted loan transactions concluded by the plaintiff with other Singapore borrowers.

I will assume for the purposes of the second defence, although it is far from clear to me whether the assumption is justified, that the plaintiff is a "company" within the definition in section 2 of the Banking Act.

No evidence, expert or otherwise, was adduced in support of the statement of counsel for the plaintiff that his client conducts banking business in Hong Kong, and on a plain reading of the Deposit-taking Companies Ordinance, there is nothing in it to suggest that companies registered in accordance with its provisions conduct banking business, as that expression is defined in the Banking Act of Singapore, as to which more later. The Ordinance stipulates (section 6) that the business of taking deposits may only be carried on by a company which is a registered deposit-taking company or a licensed deposit-taking company, and makes provision for the regulation of the deposit-taking industry, including the appointment of a commissioner of Deposit-taking Companies. The fact that the holder of this office is the Commissioner of Banking for the time being suggests to me that the banking and the deposit-taking industries are quite separate. I have accordingly reached the conclusion, on such evidence as is before me, that the plaintiff very probably cannot be said to carry on banking business in Hong Kong any more than a finance company in Singapore registered under the Finance Companies Act, which essentially borrows and lends money, can be said to conduct banking business here.

I construe the definition of "banking business" in section 2 of the Act to mean that a company can only be said to be conducting banking business if it performs *all* of the functions of receiving money on current or deposit account; paying and collecting cheques; making advances; and such other business as may be prescribed by the Monetary Authority of Singapore for the purposes of the Act. It cannot, in my view, be said that a proper construction of the definition requires it to be read as though the word "or" appears after each of the types of business described in the definition.

The Memorandum and Articles of Association of the plaintiff were not before me, and as I have said, there was nothing in evidence to establish that the plaintiff, as part of its functions, receives money on current account, and that it pays and collects cheques.

In *United Dominions Trust* v. *Kirkwood*[4], the plaintiffs ("UDT") sought to establish that they were *"bona fide* carrying on the business of banking" within the meaning of section 6 of the Moneylenders Act 1900 of England. Although English statutes defined a banker as a person who carried on the business of banking, nowhere was the business of banking defined. It therefore fell to the court to decide what characteristics went to make up that business. Lord Denning M.R. undertook an historical analysis (at pp. 974 and 975) and concluded:

> "There are, therefore, two characteristics usually found in bankers today:
>
> (i) they accept money from, and collect cheques for, their customers and place them to their credit;
>
> (ii) they honour cheques or orders drawn on them by their customers when presented for payment and debit their customers accordingly.
>
> These two characteristics carry with them also a third, namely,
>
> (iii) they keep current accounts, or something of that nature, in their books in which the credits and debits are entered.
>
> Those three characteristics are much the same as those stated in *Paget's Law of Banking* (6th Ed.) (1961), p. 8:
>
> 'No one and nobody, corporate or otherwise, can be a 'banker' who does not
>
> (i) take current accounts;
>
> (ii) pay cheques drawn on himself;
>
> (iii) collect cheques for his customers.' "

In *Re Roe's Legal Charge*[5], the evidence showed that the plaintiffs were doing all three of

these acts, and the trial judge held that the plaintiffs were carrying on the business of banking. His decision was upheld by the Court of Appeal. Lawton L.J. stated:

"Mr. Megrah eloquently suggested perhaps this was an occasion for this court to define more exactly than was done in the *United Dominions Trust* case what were the extra elements over and above those to which the 6th Ed. of *Paget's Law of Banking* referred which made a business a *bona fide* banking business. For my part, I have no intention whatsoever of attempting to define that which Parliament for many years has decided not to define. I content myself with saying that I am satisfied that the judge did not misdirect himself when he looked at this business and said it is a *bona fide* banking business."

While accepting that a statute must normally be interpreted by reference to its own language, I regard a consideration of the *UDT* case to be legitimate as an aid to the construction of the definition of "banking business" in the Banking Act. In *Bank of England* v. *Vagliano Brothers*[6], Lord Herschell said, at p. 145:

"I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground."

In *Williamson And Others* v. *Rider*[7] and *Yorkshire Insurance Co. Ltd.* v. *Nisbet Shipping Co. Ltd.*[8] the court considered earlier authorities in the course of interpreting provisions in the Bills of Exchange Act and the Marine Insurance Act 1906 respectively. Lord Herschell's dictum that there should be "some special ground" to justify resort to earlier cases seems not to have been uppermost in the minds of the Court of Appeal in *Williamson's* case and Diplock J. in the *Yorkshire Insurance Co.* case.

Although Parliament in Singapore, unlike Parliament in England, has defined "banking business", I am not persuaded that its intention was to alter the definition conferred on the expression in the *UDT* case, which was followed and adopted in *Re Roe's Legal Charge.* In my view, the legislature did not intend the definition of "banking business" in the Banking Act to be construed disjunctively so that the making of advances to customers alone amounts to the conduct of banking business.

In the result, I find that the plaintiff was not conducting banking business in Singapore in concluding the agreement and advancing the loan to the first defendant.

It follows that the defendants fail on both their defences, and I accordingly order the sum due by the first defendant to the plaintiff, calculated on the basis upon which US$869,261.91 plus accrued interest of US$152.21 was owed by the first defendant to the plaintiff as at September 8, 1986, to be paid within 30 days. I further order, in the event of default, that the mortgage over the property be enforced by foreclosure or sale, and that the first and second defendants do deliver up possession of the property for this purpose forthwith upon default being made.

The plaintiff has asked for its costs to be taxed as between solicitor and own client. However, my order is that the first and second defendants do pay the plaintiff's costs of these proceedings, to be taxed as between party and party, as to three quarters by the first defendant, and as to one quarter by the second defendant.

Order accordingly.

Solicitors: *Haridass Ho & Partners; Chua Hay & Wee; Loo & Loo.*